



November 30, 2021

The Honorable Sarah Bianchi
Deputy United States Trade Representative
Office of the US Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Deputy USTR Bianchi,

BSA | The Software Alliance¹ congratulates the Office of the US Trade Representative on the recent conclusion of the first US-China Presidential Summit. We also wish to express our support for the Administration's positions on US-China trade policy. As reflected in BSA's [Jobs-Centric Digital Trade Policy](#) and as stated in USTR's [New Approach to the US-China Trade Relationship](#), we share the view that "the key to our global competitiveness and creating shared prosperity begins at home," and that, "[w]hen it comes to our relationship with China, what's best for American workers is growing the American economy to create more opportunity and more jobs with better wages here in the United States."² We also agree that US-China trade policy should account for both internal- and external-facing priorities, including:

- (1) Making smart domestic investments to safeguard US technology leadership and increase US competitiveness, including in R&D and advanced manufacturing;
- (2) Building US worker competitiveness with 21st Century skills and training; and
- (3) Supporting strategic export sectors that provide well-paid jobs for Americans who produce goods and services for sale abroad.

One such strategic US export sector is software. The US software industry supports a large US trade surplus, \$103 billion in annual US R&D investments,³ and 16 million jobs nationwide, including 12.5 million jobs outside of the technology sector.⁴ These are jobs that pay more than twice the average US wage and that are often accessible with a vocational or technical degree.⁵ These jobs are growing fastest in states including Florida, New Hampshire, New Mexico, New York, South Carolina, and Vermont.⁶ And there is room for further growth, as an estimated 1 to 2 million ICT- and software-related jobs continue to go unfilled in America, especially in the manufacturing sector, where 40 percent of manufacturers urge greater investment in software and related advanced manufacturing skills.⁷

We take this occasion to highlight the US software industry's priorities that are in line with USTR's [New Approach to the US-China Trade Relationship](#):

1. **Enforcing Phase 1 Purchase Commitments:** BSA appreciates President Biden's November 15 message to China's leadership underscoring the need for full implementation of the Phase 1 agreement. BSA supports USTR's resolve to hold China to its Phase 1 purchase commitments, including commitments covering "cloud and related services" under the IMF's BMP6 Category,⁸ which are critical to US exporters in all sectors. Covered services include: (1) data hosting,

processing, and related services; (2) telecommunication services; (3) computer services; and (4) information services. As noted above, millions of American workers are directly engaged in the software and cloud services sector. If China fails to meet these purchase commitments, American workers will pay the price.

2. **Structural Concerns Outside of Phase 1 Agreement:** BSA also shares USTR's "serious concerns with China's state-centered and non-market trade practices that were not addressed in the Phase One deal."⁹ BSA's concerns include: (a) continuing non-fulfillment of China's scheduled commitments to permit cross-border provision of data processing services (Mode 1), as well as its corollary commitments under Modes 2-4, of the General Agreement on Trade in Services; (b) the imposition of increasingly onerous data localization requirements and cross-border data restrictions; and (c) the development of standards and technical regulations that do not comport with international standards and that may disfavor foreign products and services. We are also concerned about reported efforts by the Ministry of Industry and Information Technology to develop standards and certify hundreds of Chinese suppliers with a view to replacing foreign technology providers in the marketplace.¹⁰ To the extent that China discriminates against products and services made by American workers, or fails to fulfill its commitments to permit American workers to provide data processing and other computer-related services on a cross-border and non-discriminatory basis, those workers pay the price.
3. **Alignment with Indo-Pacific Allies:** We strongly endorse USTR's support for "work[ing] with allies to shape the rules for fair trade in the 21st century, and facilitate a race to the top for market economies and democracies."¹¹ We are particularly supportive of President Biden's recent announcement of an [Indo-Pacific Economic Framework](#).¹² A coherent, stable, and predictable framework for economic engagement with Indo-Pacific allies and partners, including in relation to the digital economy and technology, could help advance US democratic values and US interests in supporting American jobs through exports of digitally enabled products and services. Such a framework would also reinforce important Administration priorities, such as closing the digital divide, growing inclusive economic opportunity, ensuring democratic accountability, and safeguarding civic and economic freedoms in the digital environment.
4. **Targeted Section 301 Tariff Exclusion Process:** BSA supports USTR's decision to evaluate "targeted tariff exclusions" that "optimally serve US interests."¹³ BSA members maintain manufacturing facilities for their most sophisticated products in the United States, supporting tens of thousands of US advanced manufacturing jobs. To operate, these facilities source some lower-end components from abroad, including from China.¹⁴ Targeted exclusions will help support the highly skilled American workers who manufacture our advanced products in the United States.

We thank you and the many professionals at USTR for your dedication and commitment to the trade policy interests of the United States, its citizens, and workers. We support your efforts to advance these interests in all areas, including in connection with the US-China trade and economic relationship. We look forward to continuing to work with you on these important matters.

Sincerely yours,

Joseph Whitlock

Joseph P. Whitlock
Director, Policy
BSA | The Software Alliance

CC:

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¹ BSA | The Software Alliance (www.bsa.org) is the leading advocate for the global software industry before governments and in the international marketplace. Its members are among the world's most innovative companies, creating software solutions that spark the economy and improve modern life. With headquarters in Washington, DC, and operations in more than 30 countries, BSA pioneers compliance programs that promote legal software use and advocates for public policies that foster technology innovation and drive growth in the digital economy. BSA's members include: Adobe, Atlassian, Autodesk, Bentley Systems, Box, CNC/Mastercam, DocuSign, IBM, Informatica, MathWorks, Microsoft, Okta, Oracle, PTC, Salesforce, ServiceNow, Shopify Inc., Siemens Industry Software Inc., Splunk, Trend Micro, Trimble Solutions Corporation, Twilio, Unity Technologies, Inc., Workday, Zendesk, and Zoom Video Communications, Inc.

² Office of the US Trade Representative, *Remarks As Prepared for Delivery of Ambassador Katherine Tai Outlining the Biden-Harris Administration's "New Approach to the U.S.-China Trade Relationship"* (Oct. 2, 2021), at: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/october/remarks-prepared-delivery-ambassador-katherine-tai-outlining-biden-harris-administrations-new>

³ The US software industry drives American innovation for enterprises and workers in all sectors. Annual US software R&D investments exceed US\$103 billion. Nationally, software-related R&D also accounts for 27% of all US domestic business sector R&D. Software-related R&D accounts for as much as 40-50% of all domestic business R&D in the District of Columbia, California, Nebraska, New York, North Dakota, Virginia, and Washington. BSA members also invest heavily in intellectual property rights protection: They are counted among the top US patent recipients (accounting in 2021 for nearly 75 percent of all US patents issued to US companies among the top 10 patent grantees) and among the major US copyright and trademark holders. See IFI Claims Patent Services, 2020 Top 50 US Patent Assignees (accessed Oct. 11, 2021) ("2020 Top 50 US Patent Assignees"), available at: <https://www.ificlaims.com/rankings-top-50-2020.htm>; See Software.org – The BSA Foundation, *Software – Supporting US Through COVID* (2021), at: <https://software.org/wp-content/uploads/2021SoftwareJobs.pdf> ("Software Jobs Report").

⁴ See Software Jobs Report.

⁵ The [Transform Your Trade](#) (TYT) program, administered by the BSA Foundation, supports the export competitiveness of American workers by connecting them with manufacturing and service sector software and digital skills training opportunities across [all 50 US states](#) and the [private sector](#), among other TYT worker assistance activities. See *generally*, Software.org – The BSA Foundation, *Transform Your Trade* (2021), at: <https://transformyourtrade.org/> ("Transform Your Trade"). See also, Software Jobs Report

⁶ See Software Jobs Report.

⁷ See Software.org – The BSA Foundation, *Manufacturing: Every Sector is a Software Sector* (2019), at: https://software.org/wp-content/uploads/Every_Sector_Software_Manufacturing.pdf Future US technological leadership depends on making smart investments today in the US workforce – especially in advanced manufacturing sectors – including in software engineering, computer-aided design and manufacturing (CAD/CAM), industrial machinery mechanics, and Computer Numerical Control (CNC) machinery operations.

⁸ See International Monetary Fund, *Balance of Payments and International Investment Position Manual* (2013), at: <https://www.imf.org/external/pubs/ft/bop/2007/pdf/bpm6.pdf>

⁹ See *supra*, A New Approach to the U.S.-China Trade Relationship.

¹⁰ Bloomberg, *Secretive Chinese Committee Draws Up List to Replace US Tech* (Nov. 2021), at: <https://www.bloomberg.com/news/articles/2021-11-16/secretive-chinese-committee-draws-up-list-to-replace-u-s-tech?srnd=premium&sref=p6AmiyaF>

¹¹ See *supra*, A New Approach to the U.S.-China Trade Relationship.

¹² The White House, *Readout of President Biden's Participation in the East Asia Summit* (Oct. 27, 2021), at: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/27/readout-of-president-bidens-participation-in-the-east-asia-summit/>

¹³ See *supra*, A New Approach to the U.S.-China Trade Relationship.

¹⁴ See *generally*, Product Exclusion Requests filed with USTR by BSA member companies noted in footnote 1.